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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) NO. CR. S. 05-53 DFL
Plaintiff,)
v.) **STIPULATION AND [PROPOSED]
THEODORE STOVALL and ORDER FOR A DEPOSITION
ELMER STEWART,) PURSUANT TO FRCrP 15
Defendants.) DATE: December 19, 2005
TIME: 3:00 p.m.
Hon. Kimberly J. Mueller, USMJ**

THE PARTIES HEREBY STIPULATE AND AGREE, by and through their undersigned counsel, that pursuant to Federal Rule of Criminal Procedure 15, in the interests of justice and due to exceptional circumstances, a videotaped deposition before a United States Magistrate Judge is necessary to preserve the testimony of Special Agent Laura Zelinski of the Drug Enforcement Administration, San Francisco Division.

The above-captioned case is set for trial before this Court on January 23, 2006, at 9:00 a.m. However, SA Zelinski will be unavailable to testify on that date because she will be in Iraq serving on a 90-day detail. SA Zelinski is a material and necessary witness because she participated in the search of the defendants' residence and will be able to testify as to what she recovered in the search, Defendant Stewart's post-Miranda

1 statements, and events she witnessed concerning Ms. Marjorie
2 Bryant.

3 The parties have agreed that a video deposition before a
4 United States Magistrate Judge is necessary, and, if this Court
5 so orders, have made arrangements to appear in the United States
6 Courthouse, 501 I Street, Sacramento, California, before the
7 Honorable Kimberly J. Mueller on Monday, December 19, 2005, at
8 3:00 p.m.

9 The United States will alert the United States Marshal's
10 Service that Defendants' presence before Judge Mueller is
11 required on December 19, 2005.

12 DATED: December 9, 2005

13 Respectfully submitted,

14 MCGREGOR W. SCOTT
15 United States Attorney

16 By: /s/ Ellen V. Endrizzzi

17 ELLEN V. ENDRIZZI
18 Assistant U.S. Attorney

19 LAW OFFICE OF DWIGHT M. SAMUEL

20 By: /s/ Dwight M. Samuel
21 per telephonic authority
DWIGHT M. SAMUEL
Attorney for Elmer Stewart

22 LAW OFFICE OF ANTHONY CAPOZZI

23 By: /s/ Anthony Capozzi
24 per telephonic authority
ANTHONY CAPOZZI
25 Attorney for Theodore Stovall

26 **O R D E R**

27 In Case Number CR. S. 05-00053, pursuant to Federal Rule of
28 Criminal Procedure 15, with exceptional circumstances having been

1 shown and in the interests of justice as described above, this
2 Court orders Special Agent Laura Zelinski of the Drug Enforcement
3 Agency to appear before the Honorable Kimberly J. Mueller on
4 December 19, 2005, at 3:00 p.m., for a videotaped deposition to
5 preserve her testimony. Defendants are ordered to be present for
6 the examination of the witness.

7 IT IS SO ORDERED.

8 Dated: December 13, 2005

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11 DAVID F. LEVI
12 United States District Judge
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